

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROD BLAGOJEVICH,
ERIC GRIFFIN,

Plaintiff,

vs.

BARACK OBAMA, *et al.*,

Defendants.

2:10-cv-01171-PMP-LRL

ORDER

This is a prisoner civil rights action. Plaintiff has failed to submit an application to proceed *in forma pauperis* on the required form. See 28 U.S.C. § 1915(a)(1)-(2); Local Rules of Special Proceedings 1-1, 1-2. Instead, plaintiff has filed a document styled “motion for *in forma pauperis*” (docket #1). As set forth below, even in the absence of an application to proceed *in forma pauperis*, the court must dismiss the complaint with prejudice as factually frivolous. The court now reviews the complaint, as well as a motion for appointment of counsel.

I. Plaintiff’s Motion for Appointment of Counsel

Plaintiff has filed a motion seeking the appointment of counsel in this case (docket #2). A litigant in a civil rights action does not have a Sixth Amendment right to appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349, 13253 (9th Cir. 1981). In very limited circumstances, federal courts are empowered to request an attorney to represent an indigent civil litigant. The circumstances in which a court will make such a request, however, are exceedingly rare, and the court will make the request under only extraordinary circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800

1 (9th Cir. 1986); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

2 A finding of such exceptional circumstances requires that the court evaluate both the likelihood
3 of success on the merits and the plaintiff's ability to articulate his claims in *pro se* in light of the
4 complexity of the legal issues involved. Neither factor is dispositive, and both must be viewed together
5 in making a finding. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991)(citing *Wilborn, supra*, 789
6 F.2d at 1331). The district court has considerable discretion in making these findings. The court will
7 not enter an order directing the appointment of counsel. As discussed below, plaintiff's complaint must
8 be dismissed with prejudice as factually frivolous. Plaintiff's motion for the appointment of counsel is
9 denied.

10 **II. Screening Standard**

11 Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a prisoner's
12 claims, "if the allegation of poverty is untrue," or if the action "is frivolous or malicious," "fails to state
13 a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune
14 from such relief." 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an arguable basis
15 either in law or in fact. *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The court may, therefore, dismiss
16 a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual
17 contentions are clearly baseless. *Id.* at 327. The critical inquiry is whether a constitutional claim,
18 however inartfully pleaded, has an arguable legal and factual basis. *See Jackson v. Arizona*, 885 F.2d
19 639, 640 (9th Cir. 1989).

20 Allegations in a *pro se* complaint are held to less stringent standards than formal pleadings
21 drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21
22 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). All
23 or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the prisoner's claims
24 lack an arguable basis either in law or in fact. This includes claims based on legal conclusions that are
25 untenable (*e.g.* claims against defendants who are immune from suit or claims of infringement of a legal
26 interest that clearly does not exist), as well as claims based on fanciful factual allegations (*e.g.* fantastic

1 or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever v. Block*, 932 F.2d 795,
 2 798 (9th Cir. 1991). Moreover, “a finding of factual frivolousness is appropriate when the facts alleged
 3 rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable
 4 facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court
 5 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with
 6 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the
 7 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
 8 1995).

9 **III. Instant Complaint**

10 Plaintiff, who is detained at the North Las Vegas Detention Center (“NLVDC”), has sued United
 11 States President Barack Obama and the United States Department of Justice. While only Eric Griffin
 12 has signed the complaint, he has listed “Rod Blagojevich” as an additional plaintiff. Plaintiff’s
 13 complaint is difficult to decipher, alleging the following:

14 In June 2010 Barrack [sic] Obama used unknown agents to block
 15 a legal motion addressed to the Ninth Circuit Court of Appeals,
 16 RE: The Grand Jury in the Rod Blagojevich. Which would have
 17 given that Grand Jury more evidence of corruption by Obama and
 18 other officials in the Dept of Justice that was taking place while
 19 holding the Senate seat and right now in the Eric Griffin vs The
 20 Dept Of Justice case. Which is why Defendant has filed this
 motion, so the Grand Jury would investigate this misconduct by
 the Defendants taking place at this very moment, and to make
 sure all the criminal investigation stays on Plaintiff Rod
 Blagojevich, and nothing gets leaked back to Obama, this is
 obstruction and witness tampering by Defendants and has, and is
 still depriving both plaintiffs the right to a fair trial

21 The court notes plaintiff’s lengthy history as a litigant before this court. Court records indicate
 22 that plaintiff has filed at least twenty-five actions in this court, prior and subsequent to his detention.
 23 (See, e.g., *Griffin, et al. v. Steward, et al.*, 2:06-cv-00122-KJD-RJJ; *Griffin et al. v. Dept. of Defence*
 24 *[sic] et al.*, 2:07-cv-01266-RLH-RJJ; *People of Iran et al. v. United States Department of Justice, et al.*,
 25 2:10-cv-00087-RCJ-PAL; *People of China et al. v. United States Department of Justice, et al.*, 2:10-cv-
 26 00091-JCM-PAL). Numerous complaints filed by plaintiff have been dismissed with prejudice for

1 setting forth fantastic and delusional claims that lack any tenable legal theory. (*See, e.g., Griffin v.*
2 *Bush*, 2:07-cv-00617-RCJ-GWF (dismissing with prejudice “based on an indisputably meritless legal
3 theory and frivolity” complaint that included allegations that President George W. Bush was involved
4 in injecting plaintiff’s brain with chemicals used to place subliminal and hypnotic messages into his
5 brain causing torture and mind control) (docket #s 3, 7); *Griffin v. White House, et al.*, 2:08-cv-00303-
6 RCJ-GWF (dismissing with prejudice “based on an indisputably meritless legal theory and frivolity”
7 complaint that included allegations that plaintiff was being held hostage by “voice to skull/mkultra” an
8 alleged biological weapon and that Dick Cheney “violated” him by not “informing Senator Reid’s office
9 to aid plaintiff by removing the banned biological weapon”) (docket #s 2, 4); *Griffin v. Leavitt et al.*,
10 2:09-cv-00845-PMP-GWF (dismissing with prejudice as “fantastic, delusional, and irrational” complaint
11 that alleged torture by “Voice-to-Skull technology”) (docket #s 5, 11); *Griffin et al. v. Pro*, 2:09-cv-
12 01126-RCJ-GWF (noting that plaintiff has filed numerous lawsuits with this court alleging that he is
13 being tortured by technological devices or chemicals that allow the government to eavesdrop on
14 plaintiff, and dismissing with prejudice as “fantastic, delusional and irrational” complaint that included
15 allegations that the court has covered up a “RICO Act crime” that resulted in several deaths and the
16 ongoing assault of plaintiff) (docket #s 5, 8)).

17 Here, lack of an application to proceed *in forma pauperis* notwithstanding, the court finds that
18 plaintiff’s allegations are fantastic, delusional and irrational. This complaint must be dismissed with
19 prejudice as frivolous, as it is clear from the face of the complaint that the deficiencies cannot be cured
20 by amendment.

21 **IV. Conclusion**

22 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE** the complaint (docket #1-1).

23 **IT IS FURTHER ORDERED** that plaintiff’s complaint is **DISMISSED with prejudice** as
24 delusional and factually frivolous.

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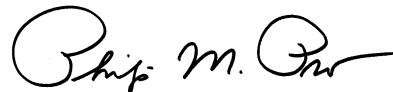
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1 **IT IS FURTHER ORDERED** that plaintiff's motion for *in forma pauperis* (docket #1) is
2 **DENIED.**

3 **IT IS FURTHER ORDERED** that plaintiff's motion for appointment of counsel (docket #2)
4 is **DENIED.**

5 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly and
6 close this case.

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8 DATED: August 5, 2010.

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12 PHILIP M. PRO
13 United States District Judge
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